

FILED

JUL 16 2012

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWARD T. FURNACE,

Plaintiff,

v.

G. GIURBINO, et al.,

Defendants.

No. C 12-0873 LHK (PR)

ORDER DIRECTING PLAINTIFF TO  
PROVIDE COURT WITH MORE  
INFORMATION FOR UNSERVED  
DEFENDANTS

Plaintiff, a state prisoner proceeding *pro se*, filed a civil rights complaint against prison officials at Salinas Valley State Prison ("SVSP") and Corcoran State Prison ("CSP"), pursuant to 42 U.S.C. § 1983. The Court ordered service of Plaintiff's civil rights complaint upon Defendants. (Docket No. 8.) On June 12, 2012, Notices of Lawsuit and Requests for Waiver of Service of Summons were mailed to the Defendants. According to the Litigation Office at SVSP, personnel records for the institution did not reflect employment of Defendants E.W. Fisher, K. Berkler, and R.S. Marquez. (Docket No. 14.) Accordingly, Defendants E.W. Fisher, K. Berkler, and R.S. Marquez have not been served.

Although a plaintiff who is incarcerated and proceeding *in forma pauperis* may rely on service by the Marshal, such plaintiff "may not remain silent and do nothing to effectuate such service"; rather, "[a]t a minimum, a plaintiff should request service upon the appropriate

1 defendant and attempt to remedy any apparent defects of which [he] has knowledge.” *Rochon v.*  
2 *Dawson*, 828 F.2d 1107, 1110 (5th Cir. 1987). Here, Plaintiff’s complaint has been pending for  
3 over 120 days, and thus, absent a showing of “good cause,” is subject to dismissal without  
4 prejudice. *See* Fed. R. Civ. P. 4(m).

5 Because Plaintiff has not provided sufficient information to allow the Marshal to locate  
6 and serve Defendants E.W. Fisher, K. Berkler, and R.S. Marquez, Plaintiff must remedy the  
7 situation or face dismissal of his claims against these defendants without prejudice. *See Walker*  
8 *v. Sumner*, 14 F.3d 1415, 1421-22 (9th Cir. 1994) (holding prisoner failed to show cause why  
9 prison official should not be dismissed under Rule 4(m) where prisoner failed to show he had  
10 provided Marshal with sufficient information to effectuate service). Accordingly, Plaintiff must  
11 provide the Court with an accurate and current location for these Defendants such that the  
12 Marshal is able to effect service.

13 In the interest of justice, the Litigation Coordinator at SVSP is requested to provide more  
14 information about the employment status of Defendants E.W. Fisher, K. Berkler, and R.S.  
15 Marquez. The request inquires whether the named Defendants were former employees of SVSP,  
16 and if they are currently employees of the California Department of Corrections and  
17 Rehabilitation (“CDCR”). If they are former employees of SVSP, but still employed with  
18 CDCR, the Litigation Coordinator is requested to provide current employment addresses for  
19 these Defendants. If they are former employees but no longer employed with CDCR, the  
20 Litigation Coordinator is requested to provide a forwarding address, or notice that such  
21 information is not available. The Clerk of the Court shall forward a copy of this order to the  
22 Litigation Coordinator at **Salinas Valley State Prison, P.O. Box 1020, Soledad, CA 93960**,  
23 who is requested to provide the current employment status for Defendants E.W. Fisher, K.  
24 Berkler, and R.S. Marquez, and any available forwarding address, or notice that such information  
25 is not available, within **twenty (20) days** from the date this order is filed.

26 Plaintiff must file notice and provide the Court with an accurate and current location for  
27 Defendants E.W. Fisher, K. Berkler, and R.S. Marquez such that the Marshal is able to effect  
28 service. If Plaintiff fails to provide the Court with an accurate and current location for

1 Defendants **E.W. Fisher, K. Berkler, and R.S. Marquez** within **thirty (30) days** of the date this  
2 order is filed, Plaintiff's claims against these Defendants will be dismissed without prejudice  
3 pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

4 IT IS SO ORDERED.

5  
6 DATED: 7/16/12

Lucy H. Koh  
LUCY H. KOH  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

EDWARD T FURNACE,

Plaintiff,

v.

G GIURBINO et al,

Defendant.

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Case Number: CV12-00873 LHK

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 16, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Edward T. Furnace H-33245  
Corcoran State Prison - SHU  
P.O. Box 3481  
Corcoran, CA 93212-3481

Dated: July 16, 2012

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk